

A. D. MATCHETT

IBLA 81-142

Decided July 22, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offer M 22706.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Bona fide Purchaser -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

APPEARANCES: Gary G. Broeder, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

A. D. Matchett appeals from a decision dated October 14, 1980, by the Montana State Office, Bureau of Land Management, which rejected in part oil and gas lease offer M 22706.

Appellant's noncompetitive public domain lease offer was filed on September 1, 1972. On October 4, 1972, the offer was rejected in part and suspended in part. The suspended lands are described as follows:

T. 2 S., R. 60 E., Principal meridian, Montana
sec. 35 S 1/2 SE 1/4
sec. 36 E 1/2, S 1/2 SW 1/4
480 acres, Carter County, Montana

BLM had suspended the offer as to these lands because it had been advised by the Forest Supervisor, Department of Agriculture, that a multiple use analysis thereon had not yet been completed and therefore no consent to lease was given.

The decision appealed herein rejected the offer as to the suspended portions on the ground that these lands, among others, were included in oil and gas lease offer M 39134, filed December 2, 1977, and issued to Connie Mull effective August 1, 1978. The lease has since been assigned to Beard Oil Company of Oklahoma City. The decision states:

Although offer M 22706 was the senior offer, we cannot cancel lease M 39134 as to the above -- described lands for the reason that a bona fide purchaser is involved. The regulations, 43 CFR 3108.3, provide that a lease shall not be cancelled if such action affects the title or interest of a bona fide purchaser even though such lease may have been subject to cancellation.

In his statement of reasons, appellant argues citing Southwestern Petroleum Corporation v. Udall, 361 F. 2d 650 (10th Cir. 1966), that Beard Oil Company was on constructive or imputed notice of the senior lease offer on file with BLM and therefore could not qualify as a bona fide purchaser.

The statute governing oil and gas leasing on lands not on the known geologic structures of a producing oil and gas field, 30 U.S.C. § 226(c) (1976), dictates that the person first making application for the lease shall be entitled to receive it, provided the applicant is qualified to hold it. There is no dispute herein that appellant's offer for the lands in question was filed prior to that of Connie Mull. Therefore, if appellant's offer was free of defects, and if he was qualified, the lease should have been issued to him and not to Mull. That BLM considered appellant qualified is attested by the fact that it issued him Lease M 22706 as to the remaining lands described therein, effective November 1, 1972. In the decision before us, BLM apparently concluded that Beard was a bona fide purchaser.

The factual situation of the case before us is very similar to that in George P. Wolter, Jr., 47 IBLA 396 (1980), except that in Wolter, the senior offeror was issued a lease for the identical lands which were encompassed in a lease issued earlier to a junior offeror. In Wolter, BLM canceled the lease to the senior offeror. While the Board stated that BLM should have canceled the junior offeror's lease, it did not direct that course of action because the junior offeror and his assignees had not been joined to the proceeding and had not had the opportunity to defend their interests. The Board vacated BLM's cancellation of the senior offeror's lease and remanded the case with instructions to allow the junior offeror and his assignees to show cause why their interests should not be canceled insofar as they conflicted with the senior and apparently superior offer. We believe that this is an appropriate course to follow herein. As Beard has not been joined, it has not alleged that it is a bona fide purchaser. On remand, BLM should join Beard, giving it an opportunity to demonstrate bona fide purchaser status protected by 30 U.S.C. § 184 (1976) and 43 CFR 3102.1-2. ^{1/} Concurrently, appellant should be given the opportunity to present evidence to the contrary. Wolter, supra; see Geosearch, Inc., 41 IBLA 291 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the matter remanded for further proceedings consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{1/} 43 CFR 3102.1-2(a) provides that

"the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease * * * or an interest therein * * * which * * * interest * * * was acquired and is held by a qualified person * * * in conformity with those provisions, even though the holdings of the person * * * from * * * [whom] the * * * interest * * * was acquired * * * may have been subject to cancellation or forfeiture for any such violation."